

EXHIBIT D

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
- - -

3 RLI INSURANCE COMPANY, : CIVIL ACTION

4 Plaintiff

5
6 vs.

7 INDIAN RIVER SCHOOL
8 DISTRICT and EDIS
COMPANY and BECKER
MORGAN GROUP, INC.,

9 Defendants : NO. 05-858
- - -

11 Oral deposition of GREGORY C. WEER,
12 taken at the law offices of Seitz, Van Ogtrop
13 & Green, P.A., 222 Delaware Avenue, Suite
14 1500, Wilmington, Delaware, on Tuesday, March
15 20, 2007, at 10:15 a.m., before Karyn M.
16 Geftman, a Registered Professional Reporter,
17 an Approved Reporter of the United States
18 District Court, pursuant to notice.
19
20
21

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Deposition of Gregory C. Weer - IRSD Supervisor of Buildings and Grounds - March 20, 2007

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8 Q. Now, from, let's say, the beginning
9 of '04 up into the spring, were any other
10 problems, aside from falling behind on the
11 scheduling with McDaniel, brought to your
12 attention?

13 A. He would occasionally work out of
14 sequence.

15 Q. Tell me what you mean by that.

16 A. The building construction is set up
17 in a sequence, this wing is a priority and
18 then another wing and then another wing; the
19 projects are broken down into sections. And
20 there is a detailed schedule that was
21 published before and during the project.

22 Q. Okay. I take it Mr. McCone
23 indicated that he was not mobilizing in the
24 right areas, working --

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1 A. Yes.

2 Q. -- not working where he should be or
3 working where he shouldn't be yet or both?

4 A. Both.

5 Q. Did that happen more than once?

6 A. Yes.

7 Q. Other than being behind and working
8 out of sequence, were there other problems
9 associated with McDaniel's work that were
10 brought to your attention during the first
11 four months, let's say, of 2004?

12 A. Not that -- no, not that I remember.

13 Q. So nothing related to quality of the
14 work?

15 A. No.

16 Q. What caused you to seek out the
17 termination information in the contract in
18 April or May of 2004?

19 A. Mr. McDaniel was falling a little
20 further behind in the schedule and we were
21 getting inquiries from his vendors requesting
22 payment for materials. He also informed us
23 in some instances that he could not get
24 materials because he couldn't pay for them.

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1 Q. Do you recall approximately when you
2 first became aware of inquiries from
3 McDaniel's suppliers concerning status of
4 their payments?

5 A. I believe the first one would have
6 been April or May of '04.

7 Q. And you told me in response to my
8 prior question that on occasions Mr. McDaniel
9 told you that he was having trouble getting
10 materials because of payment issues.

11 A. Yes.

12 Q. And when did he tell you that?

13 A. It would have been in the spring of
14 '04.

15 Q. Okay, so, again, April or May?

16 A. Yes.

17 Q. Did he tell you that at a progress

18 meeting or --

19 A. Yes.

20 Q. And would that have, would that be
21 the type of information that would be
22 memorialized in the project meeting minutes
23 that Mr. McCone would prepare?

24 A. The fact that he was having trouble

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1 getting materials would probably have been in
2 there, not necessarily that he didn't have
3 the money for it. It should have been in the
4 minutes.

5 Q. You would have expected to see that
6 type of information?

7 A. I would have expected to see that he
8 was having problems getting materials. I
9 would not expect to see in the minutes that
10 it was due to lack of payment.

11 Q. Did you, during May -- April, May,
12 of 2004, did you discuss the problems that
13 had arisen to that point with McDaniel with
14 Mr. McCone outside of the project meetings?

15 A. We may have discussed it after a
16 meeting.

17 Q. Your decision to look at the
18 contract to determine what was necessary to
19 terminate the contractor, was that something
20 you undertook on your own initiative?

21 A. Only after the question had been, or
22 the -- excuse me -- only after the
23 possibility had been raised by EDiS.

24 Q. Tell me about that discussion. When

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1 is the first time that you were involved in a
2 discussion with anyone about the possibility
3 of terminating McDaniel.

4 A. I would say late April.

5 Q. And tell me about the circumstances
6 of that discussion.

7 A. We were looking at the schedule for
8 completion of the project knowing that we
9 were quite behind at that point with the
10 possibility that the B-wing would not be
11 completed in time to open the school in
12 September and there were questions about some
13 of the other wings being ready.

14 Q. And the commencement of the,
15 generally speaking, the school was expected
16 or desired to be open and ready for the
17 beginning of the '04-'05 school year?

18 A. That's correct.

19 Q. So in late April 2004 you're looking
20 at the schedule and becoming concerned about
21 the prospect of meeting that goal?

22 A. Yes.

23 Q. And who else were you looking at
24 that schedule with?

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1 A. EDiS and Becker Morgan.

2 Q. Was there a meeting called for this
3 purpose of reviewing the schedule?

4 A. No, we generally would have done
5 that prior to or following the progress
6 meeting.

7 Q. In this particular instance, do you
8 recall which it was?

9 A. It was probably after.

10 Q. So one of the meetings in late
11 April, a general progress meeting took place?

12 A. Yes.

13 Q. And is it your recollection that
14 after that you and the EDiS and Becker Morgan
15 representatives talked about the schedule and
16 the problems that you saw?

17 A. Yes.

18 Q. Would that have been Mr. McCone or
19 his site superintendent?

20 A. Well, it would have been both.

21 Q. So both gentlemen it's your
22 recollection were there when you had that
23 first, the first discussion on that topic?

24 A. Yes.

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1 Q. Do you recall who was there for the
2 architect?

3 A. No. It would have been probably
4 Sandy Carpenter.

5 Q. The three architect representatives
6 that you told me about before, were they on
7 the project in succession or did they
8 alternate from time to time? In other words,
9 was it different people because some left or
10 got transferred or could it have been any of
11 those three people at any --

12 A. It could have been any one of the

13 three. Lisa was the lead architect, Sandy
14 was operating as an office manager or project
15 manager and Brad is a principal in the
16 company.

17 Q. And, if you know, were all three of
18 those folks with Becker Morgan pretty much
19 throughout the time frame we've been talking
20 about?

21 A. Yes.

22 Q. Do you know whether any or all three
23 of them are still with Becker Morgan?

24 A. Yes.

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1 Q. And all three are still?

2 A. Yes.

3 Q. So the probably four of you talk
4 about the schedule, McDaniel's falling behind
5 and the target opening date is looming.

6 Tell me everything you recall
7 about that discussion. What did you talk
8 about? What was decided? I know that you
9 ultimately looked at the contract, but tell
10 me what happened in between.

11 A. After discussing the schedule within
12 the progress meeting with the contractors,
13 we, after the meeting we sat down and again
14 went through the schedule to see where our
15 problems were, where our hold-ups were and to
16 try to brainstorm solutions to get it done
17 short of additional manpower or whatever.
18 And we even discussed the possibility of not
19 opening the B-wing on time and concentrating
20 on the other areas.

21 Q. And was this all during this first
22 meeting that you talked about these various

23 possibilities?

24 A. We talked about it several times

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1 after that.

2 Q. But these were topics covered in the
3 first meeting and then you had other
4 meetings?

5 A. Yes, that's correct.

...

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14 Q. Okay. McDaniel was still working on
15 the project as of the end of August of 2004,
16 correct?

17 A. Yes.

18 Q. In your estimation, what percentage
19 of their overall scope of work had been
20 completed by that time, by the end of August,
21 just before school was supposed to open?

22 MR. AMADIO: Objection to
23 form.

24 BY MR. SHIELDS:

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1 Q. You can answer. You can answer the
2 question.

3 A. There was virtually no work done in
4 B-wing. We still had issues in the rest of
5 the building. Maybe, I'm going to say maybe
6 70 to 75%.

7 Q. So 70 to 75% of --

8 A. Total contract.

9 Q. -- their total contract had been
10 completed by the end of August?

11 A. Yes.

12 Q. Now, would that, would that include
13 or exclude the \$120,000 piece that had been
14 subtracted out and given to Zimmer?

15 A. He would not have completed that
16 work.

17 Q. Right. What I guess I'm saying is
18 that --

19 A. I don't understand.

20 Q. Let me clarify.

21 By August 30th, 2004,
22 McDaniel's scope has been shrunk a bit by the
23 Zimmer work.

24 A. Yes.

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1 Q. And the 70 to 75% completion that
2 you just talked about, is that what remained
3 in the McDaniel contract?

4 A. Yes.

5 Q. You characterized this earlier in
6 response to another one of my questions as
7 late in the project. So the progress
8 meetings were happening about on a weekly
9 basis now; is that correct?

10 A. Yes.

11 Q. And you were attending them all.

12 A. Yes.

...

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6 Q. As of August 31st, 2004, in your
7 estimation, was all of the sanitary sewer
8 lines, underground, which is listed as the
9 third item under description of work, was it
10 100% complete?

11 MR. AMADIO: Objection to the
12 form.

13 A. If I recall, I believe that most of
14 the underground was done by that time.

15 BY MR. SHIELDS:

16 Q. How about the next item line, the
17 sanitary lines above ground, were they 100%
18 complete?

19 A. No.

20 Q. Going back to the underground
21 sanitary line, to the best of your knowledge,
22 was the quality of the work in accordance
23 with the contract documents?

24 MR. AMADIO: Objection to the

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1 form.

2 A. Which work?

3 BY MR. SHIELDS:

4 Q. I should have, I meant to break up
5 the questions.

6 The third line item, sanitary
7 sewer underground, I think you said you
8 believed it was complete. And my question is
9 was it, was the quality of the work

10 consistent with what was expected under the
11 contract?

12 MR. AMADIO: Objection to
13 form.

14 A. I'm not qualified to answer that
15 really.

16 BY MR. SHIELDS:

17 Q. Fair enough.

18 Continuing on, you told me a
19 moment ago, I think, that you believe that
20 the above ground sanitary lines were not 100%
21 complete as of August 31, 2004?

22 A. In hindsight, no because B-wing was
23 not complete.

24 Q. What percentage, and perhaps to

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1 speed this along just a bit, until I tell you
2 different, all of the questions over the next
3 few minutes will be as of August 31st, 2004.

4 What percentage of the above
5 ground sanitary sewer lines were complete?

6 MR. AMADIO: Objection to
7 form.

8 A. Based on my thinking at the time or
9 based on what I know now? I mean, hindsight
10 I know things were not as we thought they may
11 have been at the time.

12 BY MR. SHIELDS:

13 Q. Let me ask you as of then, what
14 percentage did you think was complete at that
15 time?

16 A. At that time I thought things were
17 done except for what was not done in B-wing.

18 Q. And my question to you is: Since
19 you certainly know the physical plant better
20 than I, what percentage does B-wing amount
21 to?

22 A. There are six wings in the building,
23 so that would be one-sixth.

24 Q. And it wasn't done at all at that

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1 point.

2 A. It had been started but it was not
3 complete.

...

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2 Q. Were the -- back to 11 -- were the
3 boilers installed as of the end of August?

4 A. Yes.

5 Q. Were they operating properly?

6 MR. AMADIO: Objection to
7 form.

8 A. No.

9 BY MR. SHIELDS:

10 Q. What was wrong with them?

11 A. They were not adjusted properly.

12 Q. Was that known at that time?

13 A. I don't recall.

14 Q. The heating/cooling pumps, were they
15 installed, fully installed in August of '04?

16 MR. AMADIO: Objection to
17 form.

18 A. I believe most of them were.

19 BY MR. SHIELDS:

20 Q. Were they operating properly and in
21 accordance with the contract?

22 MR. AMADIO: Objection to
23 form.

24 A. They were operating. I don't know

Page 133

1 if they were all operating properly or not.

...

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2 BY MR. SHIELDS:

3 Q. Let me ask you, do you know what ATC
4 stands for?

5 A. Automatic Temperature Control.

6 Q. That's what I was going to guess,
7 but I'd be foolish if I guessed wrong.

8 Do you know if the automatic
9 temperature control was fully installed as of
10 August?

11 MR. AMADIO: Objection to
12 form.

13 A. No, it was not.

14 BY MR. SHIELDS:

15 Q. All right. What percentage of
16 completion had been achieved by then?

17 MR. AMADIO: Objection to
18 form.

19 A. I couldn't say.

...

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13 I'd like to go back to Weer-11
14 and 11A just for a moment. I'm going to show
15 you the last page first.

16 Now, this, again, just for the
17 record, this is Application 24. I understand
18 that you have indicated to me that you're not
19 sure whether you've seen this one before
20 since this copy does not bear your stamp or
21 your initials.

22 Notwithstanding that
23 information, would you agree with me that on
24 the second page it indicates that the level

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1 of completion of the McDaniel contract
2 overall is 98.05%.

3 Do you see that?

4 A. That's what it says.

5 Q. In August, the end of August of
6 2004, and I'm asking you for your
7 recollection back then, what percentage of
8 the building, of the McDaniel contract do you
9 think was complete or did you think was
10 complete at that time?

11 MR. AMADIO: Objection to
12 form.

13 A. Well, I would say it would be less
14 than 100%. At that time versus what I know
15 now would change my response.

16 BY MR. SHIELDS:

17 Q. So the information you've learned

18 since then makes it difficult for you to --

19 A. To say what my impression was on

20 August 31st.

21 Q. And today that opinion is 70 to 75%?

22 MR. AMADIO: Objection to the

23 form.

24 A. At this point in time, knowing what

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1 I know since August 31st of '04, there was

2 definitely less than 80% done.

3 BY MR. SHIELDS:

4 Q. Of the percentage that was done, was

5 there, was some of that not qualitatively in

6 accordance with the contract documents?

7 MR. AMADIO: Objection to the

8 form.

9 A. You mean was it done properly?

10 BY MR. SHIELDS:

11 Q. Right.

12 MR. AMADIO: Objection to

13 form.

14 BY MR. SHIELDS:

15 Q. Was it consistent with what the

16 contractor had agreed that the quality would

17 be?

18 MR. AMADIO: Objection to

19 form.

20 A. Knowing what I know now, there was

21 work that was done that was not in accordance

22 with the contract documents.

23 BY MR. SHIELDS:

24 Q. So of the 70 to 75% that was done,

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1 some portion of that was not done properly.

2 MR. AMADIO: Objection to
3 form.

4 BY MR. SHIELDS:

5 Q. Knowing what you know now.

6 A. No, I would say that within that
7 percentage, the 25% undone or improperly
8 done.

9 Q. So you're including work that might
10 have been complete in, by McDaniel's lights,
11 let's say, but not by yours in the 25 to 30%
12 below 100?

13 MR. AMADIO: Objection to
14 form.

15 A. I would include work that was not
16 properly done.

17 BY MR. SHIELDS:

18 Q. So you're at 70 to 75% done and done
19 right.

20 A. Yes.

21 Q. Have you ever discussed with
22 Mr. McCone why in hindsight EDiS reported the
23 project to be 98%, the McDaniel scope, 98%
24 complete and properly done back then?

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1 MR. AMADIO: Objection to
2 form.

3 MS. PETRONE: Objection to
4 form.

5 A. No.

6 BY MR. SHIELDS:

7 Q. Never had a discussion with him on
8 that topic at all?

9 MR. AMADIO: Objection to
10 form.

11 MS. PETRONE: Objection.

12 A. No, I did not question that
13 specifically.

14 BY MR. SHIELDS:

15 Q. Have you ever had such a
16 conversation with anyone from Becker Morgan?

17 MR. AMADIO: Objection to
18 form.

19 MR. COTTRELL: Objection to
20 form.

21 A. No.

22 BY MR. SHIELDS:

23 Q. Have you ever had a discussion with
24 anyone associated with the Indian River

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1 School District or anyone that was hired as
2 to the difference between that statement of
3 level of completion and quality and what you
4 now in hindsight know or considered to be the
5 case?

6 MR. AMADIO: Objection to
7 form. And do you mean excluding counsel?

8 MS. PETRONE: Objection.

9 BY MR. SHIELDS:

10 Q. Yes, excluding conversations with
11 your attorney.

12 A. No.